



National Indian Gaming Commission Newsletter

April 2006

Volume I, Number 2

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Phil Hogen

Associate Commissioner

Cloyce "Chuck" Choney

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Message from Chairman Hogen

By Phil Hogen, NIGC Chairman

The National Indian Gaming Commission (NIGC) is off to a busy and productive year in 2006. In the span of just six weeks the NIGC testified before Congress on four different occasions.

In February, the NIGC testified before the Senate Committee on Indian Affairs at three hearings. The hearings addressed the possible removal of some exceptions in the Indian Gaming Regulatory Act (IGRA) allowing off-reservation gaming; the classification and treatment of political donations by Indian tribes by the Federal Elections Commission (FEC); and proposed changes to IGRA that would require NIGC review and approval of certain non-management contracts and would require the NIGC to conduct background investigations and make suitability determinations for the gaming related contractors.

We testified before the House Resources Committee on March 15, 2006, to provide information on Committee Chairman Richard Pombo's legislative proposal H.R. 4398. This legislative proposal would remove the current off-reservation gaming exceptions found in Section 2719 of the IGRA; would allow a tribe to operate gaming operations on another tribe's land if located within the same state; and would require newly recognized, restored, or landless tribes to have a geographic, social, historical, and temporal relationship to the land on which a gaming operation is located while limiting these tribes from crossing state lines to open gaming operations.

The NIGC has also held three tribal consultations this year. The first two were held during the 11th Western Indian Gaming Conference in Palm Springs California January 9-11, 2006, and during the United South and Eastern Tribes Impact Week in Washington DC, February 6-9, 2006. The other consultation took place during the 9th Annual Southwest Indian Gaming Conference and Expo in Scottsdale, Arizona February 13-15, 2006. These consultations are an invaluable guide for the Commission to keep up on the issues facing Indian



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Region I Facts:

There are 44 tribal
gaming operations in
Region I.

In FY 2004, Region I
had \$1.6 billion in tribal
gaming revenues.

Region I currently has 4
Field Investigators,
including the Regional
Director.

In August 2005, Region
I opened a new satellite
office:

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There are 41 Tribes
with approved Tribal-
State Compacts in
Region I.

gaming communities around the country. The NIGC will be holding tribal consultations during the National Indian Gaming Association's Annual Convention in Albuquerque, New Mexico April 3-5, 2006.

We have also been working hard on the proposed clarification of the difference between Class II and Class III games. After many months of negotiations with the Department of Justice (DOJ) on amendments to the Johnson Act, the NIGC and DOJ announced their agreement to work cooperatively on legislation being considered in Congress. Additionally, DOJ held tribal consultations on this matter. Tribes effectively presented their concerns and, as a result, the DOJ has revised its proposed legislation, ceding to the NIGC the authority to develop its own definitions of gaming machine classification. This legislative proposal has yet to be introduced as a bill, but we anticipate its introduction in the coming weeks.

Our Standing Minimum Internal Control Standards (MICS) Advisory Committee has also been very active. In January 2004, the Commission received nominations for Tribal representatives to serve on the committee for a two year term. From the 27 Tribal nominations that it received, the Commission selected 9 Tribal representatives in March 2004 to serve on the Committee. The Standing Advisory Committee has held meetings on April 8, 2004, October 21, 2004, January 25, 2005, May 10, 2005, and September 26, 2005, to discuss various revisions to the MICS. The resulting work product has been the publishing of final rule revisions in the Federal Register on May 5, 2005, and August 12, 2005; a third set of revisions was published as a proposed rule on November 15, 2005. Comments were submitted on the proposed MICS regulations, and after careful consideration of all received comments, the third set of amendments is in the final stages of rule revision.

The Department of the Interior (DOI) has recently released to Tribal Leaders its draft regulations for Section 20 of the IGRA, 25 U.S.C. § 2719, which contains exceptions to the Act's general prohibition on off-reservation gaming. Tribal consultations regarding these draft regulations are being held, and the NIGC is taking part in that process.

We are pleased that through strong management, responsible fiscal spending, and a solid working relationship with tribal regulators we have been able to hold the fee rate at a level rate of .053% of gross gaming revenues for 2006. We will continue to improve our capabilities and our staff to accomplish the goals and objectives of the Commission.

Finally, we are happy to announce the NIGC will shortly be unveiling a new website which will provide updated information in a user friendly fashion. Keep an eye out for the changes at our website: www.nigc.gov.

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Region Director

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Region II Facts:

There are 52 tribal gaming operations in Region II.

In FY 2004, Region II had \$5.8 billion in tribal gaming revenue.

Region II had the largest gaming revenue of any region.

Indian Gaming Working Group Reaches out to Tribes

By Chuck Choney, NIGC Commissioner

The NIGC in cooperation with the Indian Gaming Working Group (IGWG) is reaching out to tribal regulators in a number of ways. It has already begun a series of training conferences exclusively for tribal regulators which will take place in 2006. In addition, the IGWG is developing a system to share information between tribal gaming regulators and state and local law enforcement agencies.



The IGWG was formed in the summer of 2004 as a result of tremendous growth in the Indian gaming industry. The NIGC announced the formation of this group to enhance cooperation between federal agencies, coordinate roles and function and develop effective strategies to investigate and prosecute Indian gaming related crimes. As a result of this cooperation, many crimes that were not previously prosecuted are now being investigated and prosecuted and brought to justice.

The IGWG consists of the Federal Bureau of Investigation, Department of Interior Office of Inspector General, NIGC, Internal Revenue Service; the Department of Treasury, Financial Crimes Enforcement Network; US Department of Justice; and the Bureau of Indian Affairs Office of Law Enforcement Services.

In order to further protect tribal gaming operations from criminal influence, the group is continuing to reach out to the tribal regulators. The IGWG plans to provide conferences on the role of federal agencies in the oversight of Indian gaming and other pertinent information. The training will be offered exclusively to tribal gaming regulators. Two representatives from each tribe will be invited to attend the upcoming training in their respective areas. The first training took place in Portland, Oregon in January of this year. At that training, 80 tribal gaming regulators and 40 representatives from state and federal law enforcement agencies were in attendance.

The next conference is scheduled for April 18-20, 2006, in Sacramento, California. This will be followed by training sessions to be held in St. Paul, Phoenix and Connecticut. The dates will be determined in the coming weeks.

In addition, the IGWG is developing a system to secure email communication to alert a gaming facility when it is faced with criminal activity or terrorist threats. This type of alert would allow tribal gaming operations to implement steps to protect their operations, employees and patrons.

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NV

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Region III Facts:

Region III has 43 tribal
gaming operations.

In FY 2004, Region III
had \$2.1 billion in tribal
gaming revenue.

Region III served as the
host of the initial
meeting of the Arizona
Indian Gaming Working
Group.

The Navajo Nation is
the most recent tribe in
the region to become a
gaming tribe.

Sole Proprietary Interest: Bad Deal or Violation of IGRA?

By Katherine Zebell, NIGC Staff Attorney

“Tribes must have the sole proprietary interest in and responsibility for their gaming operations.” This unequivocal, emphatically-stated premise is a cornerstone of the Indian Gaming Regulatory Act (“IGRA”) and can be found in each gaming tribe’s gaming ordinance. It is designed to guarantee that IGRA’s central purpose is realized – that tribes will themselves own and be the primary beneficiaries of their gaming operations.

The National Indian Gaming Commission is tasked with making sure that tribes retain the sole proprietary interest in their gaming operations. This applies during the entire life of the operation, including the early stages, when a tribe may be compelled to engage in creative, non-traditional financing for a variety of reasons. About six years ago, the NIGC began reviewing contracts for sole proprietary interest violations as concerns grew about questionable payment provisions that disproportionately benefited contractors rather than tribes. While the NIGC respects that tribes, as sovereign nations, are free to enter into “bad deals” without interference from the NIGC, at some point, a “bad deal” can be so bad that it violates the sole proprietary interest requirement. That’s when the NIGC steps in.

The NIGC’s discovery of a proprietary interest violation generally occurs during a routine review of a contract that has been submitted by a tribe for a determination of whether it is a management contract requiring the NIGC Chairman’s approval. If we conclude that there is a sole proprietary interest problem, we inform the tribe of our conclusion that the contract violates IGRA. Typically, this prompts changes to the contract by mutual agreement of the parties. If no changes are made, the parties risk having the entire contract invalidated, as well as subjecting the tribe to fines and even closure of its gaming operation.

The NIGC’s review is fact-based, with a focus on the money – how much is the tribe paying, for how long and what is the tribe getting in return. In a nutshell, there must be a rational relationship between the services provided to the tribe and the money paid out by the tribe, the latter being sometimes a finite amount and sometimes a percentage of gaming revenues. We look at variety of factors, including whether the compensation paid by the tribe is tied to profits; the length of the contract; and whether a security interest is granted in the gaming operation. We also look at the extent of risk taken on by the contractor, including assumption of debt; the financing terms; and the tribe’s financial health and ability to arrange alternative financing.

Region IV - St. Paul

MI, MN, WI, IA, MT, NE,
ND, SD, WY

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St. Paul, MN 55101

Contact Us

John Peterson, Region
Director

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Region IV Facts

Region IV has the most
number of tribal gaming
operations with a total
of 117

In FY 2004, Region IV
had \$3.8 billion in tribal
gaming revenue

Region IV has the third
highest tribal gaming
revenue by region

In addition to the
Regional Director,
Region IV has 2
investigators and 2
auditors in St. Paul, and
2 investigators in Rapid
City

In 2004, Region IV
opened a satellite
office:

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In recent years, the NIGC has determined that a number of contracts violate the sole proprietary interest requirement. In one such agreement, the tribe was to pay a contractor 35% of its net gaming revenue for a period of five to seven years, exceeding IGRA's 30% cap on compensation from net revenue in management agreements. The contractor also insisted on preferential payments, i.e. payments from the tribe before all obligations other than operating expenses. At the time of the deal, the tribe was financially healthy, with other successful gaming operations up and running; the local competition was minimal; and the operation's location was blessed with favorable demographics and nearly year-round tourism. The services being provided to the tribe by the contractor involved a loan, which had been satisfied early in the contract's life, but there were no ongoing services of any kind beyond the initial loan. After assessing what the tribe was giving in relation to what it was getting, the NIGC concluded that the tribe was being deprived of its sole proprietary interest in the gaming operation.

Tribes or contractors may wish to submit agreements to the NIGC for review as early in the contracting process as possible. By avoiding a sole proprietary interest violation, tribes will enhance their profits as well as maximize authority and control over their gaming operations.

Pokagon Story

By Denise Desiderio NIGC Legal Intern

When the Department of the Interior placed land into trust for the Pokagon Band of Potawatomi Indians on January 27, 2006, it put an end to a five-year battle and paved the way for the Tribe to begin construction on its planned Four Winds Casino.

The Pokagon Tribe, comprised of approximately 2,700 members, had its relationship with the federal government affirmed in 1994 when Congress enacted the Pokagon Restoration Act. The Restoration Act directed the Secretary of the Interior to take land into trust for the Tribe to become part of its reservation. Following restoration, the Tribe purchased land in New Buffalo, Michigan and requested the land be taken into trust for the Tribe by the Secretary of the Interior.

The 675 acre parcel of land became the subject of a lawsuit brought by the Taxpayers of Michigan Against Casinos (TOMAC) which challenged the Secretary's authority to take the land into trust for the Tribe and argued that the Bureau of Indian Affairs was required to prepare an environmental impact statement to evaluate the impact of development on the land on the surrounding community. TOMAC also claimed that the BIA improperly concluded that the Tribe was restored under § 20 of the Indian Gaming Regulatory Act.

Region V - Tulsa

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Region V Facts

Region V has 87 tribal
gaming operations.

In FY 2004, Region V
had \$1.2 billion in tribal
gaming revenue.

Thirty tribes have
operative Tribal-State
compacts with the State
of Oklahoma for Class
III gaming.

Region V helped to
organize the formation
of the Oklahoma Indian
Working Group.

The Appeals Court upheld the lower court's decision and found that the Environmental Assessment performed by the Bureau of Indian Affairs was sufficient for purposes of this parcel, that the Secretary has the delegated authority to take land into trust for the benefit of the Tribe, and the Tribe fell within the restored lands exception of the Indian Gaming Regulatory Act because it was restored to federal recognition under the Pokagon Restoration Act.

With the land now placed in trust, the Tribe plans to begin construction on the 144,000 square-foot, \$160 million Four Winds Casino this Summer and hopes to have the project completed mid-2007.

Longtime NIGC Director to Retire

Irene Schrader has announced her retirement from the NIGC. She has been the Director of Administration for the Commission for over 7 years. In addition, she has over 25 years of government service, including several years with the National Park Service.



Irene has had a positive impact on the history and direction of the Commission overseeing major changes as the staff nearly tripled. During Irene's tenure, the NIGC also went from zero field offices to six regional offices and three satellite-offices. Her hard work and dedication with the NIGC will leave a lasting legacy.

Irene said this was a very difficult decision and after careful consideration she decided to retire. Her current plans are to spend time with family and friends and do some traveling. Irene's last day with the Commission will be April 3, 2006.

NIGC Employee Profile

Danna M. Hill has been with the NIGC since June 1990. She was the third NIGC employee hired. During the early years she has worked in many roles; the Chairman's secretary, procurement, telecommunications, correspondence control, and many other duties that were necessary to assist with the daily administrative support.



Danna has successfully completed a specialized program of study in Administrative Procedures and has many years of experience and training in Human Resources. She serves as the principal agency contact for the day-to-day personnel business of the NIGC, including payroll.

Region VI

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David Burk, Field
Investigator

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Region VI Facts

Headquartered out of the Washington, DC office and services the states of Alabama, Connecticut, Florida, Louisiana, Mississippi, New York and North Carolina. There are currently 13 Tribes conducting Indian Gaming in Region VI, operating 25 gaming operations.

The Region VI satellite office opened for business in Flowood, a suburb of Jackson Mississippi in December 2005. The office services the Tribes located in the southeast. The office is currently staffed with one Field Investigator, David Burk, and one auditor, Michael Ross.

Some of her other duties include assisting the Director of Administration with the day-to-day administrative functions. For many years, Danna has successfully represented the NIGC in the Combined Federal Campaign and have received Special Service Awards for her leadership and several prestigious awards; President's Award, Honor Award, Winner Circle Award and the Pacesetter Award, for NIGC representing employees for 100% participation.

Other News

NIGC welcomes Patrick Duley who has taken a position as our network engineer. Patrick has a distinguished technical background with over 10 years of experience. He will join the IT staff with responsibilities that include helping insure that our network systems are running securely, in an integrated manner and facilitate communication within the Commission.

This is Patrick's first government position and he seeks to deliver simple, secure, reliable systems that exceed customer expectation.

Patrick lives in Alexandria, Virginia with his wife.

NIGC Preliminary Fee Rate

The National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% for tier 1 and 0.053% (.00053) for tier 2 for calendar year 2006. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission.

If a tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2006 shall be one-half of the annual fee rate, which is 0.0265% (.000265).

The fees are due in four quarterly payments.

Please be sure to use calendar year 2005 as the base period for determining 2006 fees payments. Also, please provide the following identifying information; name, address and telephone number of the gaming operation; name of licensing tribe; name and telephone number of contact person.

Should you have any questions, please call Bobby Gordon at 202/632-7003.

New NIGC Website in April 2006

The newly designed website is now up and running @ www.nigc.gov. Our goal is to provide a more user friendly website. Should you have suggestions to improve the site, email Shawn Pensoneau at shawn_pensoneau@nigc.gov.

NATIONAL INDIAN GAMING COMMISSION

LATEST NEWS

Commission News

- Minimum Internal Control Standards Revisions to 25 C.F.R. Part 542
- Minimum Internal Control Standards Latest Revisions to 25 C.F.R. Part 542
- Field Investigator Vacancy Position Portland, Oregon
- Development of Class II Classification and Technical Standards
- Use of Net Gaming Revenues Bulletin Press Release
- NIGC Statement before Senate Committee on Indian Affairs April 27, 2005
- Commission issues Fifth Preliminary Working Draft of Proposed Class II Game Classification Standards
- NIGC Publishes Second Set of Revisions to the MICS
- Training Seminar - Rapid City
- Field Investigator Vacancy Position Portland, Oregon
- Development of Class II Classification and Technical Standards
- Use of Net Gaming Revenues Bulletin Press Release

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latest developments
regional offices
laws & regulations
tribal data
nigc publications
foia

As an independent federal regulatory agency of the United States, the National Indian Gaming Commission (Commission) was established pursuant to the Indian Gaming Regulatory Act of 1988 (Act). The Commission comprises a Chairman and two Commissioners, each of whom serves on a full-time basis for a three-year term. The Chairman is appointed by the President and must be confirmed by the Senate. The Secretary of the Interior appoints the other two Commissioners. Under the Act, at least two of the three Commissioners must be enrolled members of a federally recognized Indian tribe, and no more than two members may be of the same political party.

The Commission maintains its headquarters in Washington, D.C., with five Regional Offices, located in Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; and Tulsa, Oklahoma.

NIGC Tribal Consultations Southwest Indian Gaming Conference



Mescalero Apache Tribe



Navajo Nation



Pascua Yaqui Tribe



Pueblo of San Felipe



Pueblo of Laguna



Pueblo of Santa Ana



Tonto Apache Tribe



Tohono O'odham Tribe



Yavapai Apache Tribe



Yavapai Prescott Tribe

NIGC Tribal Consultations Western Indian Gaming Conference



Sohoba Band of Mission Indians



Rincon Band of Luiseno
Mission Indians



Pit River Tribe of California



Morongo Band of Mission Indians



United Auburn Indian Community



Upper Lake Rancheria



29 Palms Band of Mission Indians



LaJolla Band of Luiseno Indians



Lytton Band of Pomo Indians



NIGC Staff at 01-06 Palm Springs CA
Consultations

Following is contact information for the National Indian Gaming Commission's Regional Offices, including updated staff information and contact information.

National Indian Gaming Commission Regional Offices

Region I

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Phone: (503)-326-5092
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Randy Sitton, Region Director

Region II

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**Eric Schalansky
Region Director**

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